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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civ. No. 15-cv-00179
)	
v.)	
)	COMPLAINT
HECLA LIMITED,)	
)	
Defendant.)	
_____)	

The United States of America, by the authority of the Attorney General of the United States and on behalf of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for civil penalties brought against Hecla Limited (“Hecla” or “Defendant”) pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. §

1319(b) and (d), for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the terms of applicable permits issued under Section 402 of the CWA, 33 U.S.C. § 1342, at Hecla's Lucky Friday Mine and Mill facility, including: exceedances of the effluent limits set forth in Hecla's National Pollutant Discharge Elimination System ("NPDES") Permit; discharges of metals-contaminated wastewater from diversion of seepages and/or culvert discharge water at Tailings Pond No. 3 to Harris Creek that were not authorized by a NPDES Permit; and violations of the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities ("MSGP").

JURISDICTION, AUTHORITY, NOTICE AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA under Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.

4. Notice of the commencement of this action has been given to the State of Idaho pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

5. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b), because this is a judicial district within which Defendant is doing business, and within which the alleged violations occurred.

DEFENDANT

6. At all times relevant to this Complaint, Defendant Hecla Limited has owned and operated the Lucky Friday Mine and Mill facility, located near Mullan, Idaho.

7. Defendant is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY FRAMEWORK

8. The objective of the CWA is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

9. To accomplish the objective of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States by any person except as authorized by, and in compliance with, certain enumerated sections of the CWA, including Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

10. The CWA defines the term “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

12. “Navigable waters” are defined as “the waters of the United States.” 33 U.S.C. § 1362(7).

13. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters, including interstate wetlands; and (iii) tributaries of the foregoing waters. 40 C.F.R. § 122.2.

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to mean “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . , from which pollutants are or may be discharged.”

15. Pursuant to Section 402 of the CWA, 33 U.S.C. 1342, the Administrator of EPA may issue NPDES permits that authorize the discharge of pollutants to waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342(a).

16. Effluent limits are among the conditions and limitations set forth in NPDES permits under 33 U.S.C. § 1342.

17. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that a NPDES permit is required for any storm water discharge associated with industrial activity. The regulations implementing Section 402(p) of the CWA define “storm water discharge associated with industrial activity” to include discharges associated with active or inactive mining operations. 40 C.F.R. § 122.26(b)(14)(iii).

18. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief for any violation for which he is authorized to issue a compliance order under Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

19. A person who violates the CWA by discharging without a permit, or failing to comply with conditions and limitations of a NPDES permit, shall be subject to civil penalties not to exceed \$25,000 per day for each violation. 33 U.S.C. § 1319(d). Under 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, as amended, and pursuant to 28 U.S.C. § 2461, the civil penalty amount was raised to a maximum of \$37,500 per day for each violation occurring after January 12, 2009 (*See* 73 Fed. Reg. 75340, December 11, 2008).

GENERAL ALLEGATIONS

20. At all times relevant to this Complaint, Hecla's Lucky Friday Mine and Mill facility had four tailings ponds: Tailings Pond No. 1, and associated Outfall 001, which were no longer in operation; Tailings Pond No. 2, which received tanker trucks of water from exploration drilling, and associated Outfall 002, which discharged treated mine water; Tailings Pond No. 3, which received mill tailings for settling out and treatment before discharge through Outfall 003; and Tailings Pond No. 4, which was under construction.

21. Hecla operates the Lucky Friday Mine and Mill facility under an administratively extended permit, NPDES Permit No. ID-000017-5, which became fully effective December 1, 2006 and expired September 14, 2008 (issued to Defendant as Hecla Mining Company, prior to Defendant's name change to Hecla Limited). The NPDES Permit, issued by EPA under Section 402 of the CWA, allows for discharges of pollutants only from specified point sources (identified in the permit as Outfalls 001, 002, and 003) into the South Fork Coeur d'Alene River. The discharges include tailings, storm water, groundwater, cooling water and sanitary wastewater. The NPDES permit authorizes discharges of pollutants from the permitted outfalls subject to limitations and conditions, including effluent limits.

22. Hecla's Lucky Friday Mine and Mill facility is also covered under EPA's 2008 Storm Water Multi-Sector General Permit for Industrial Activities, MSGP Tracking No. IDR05C290, issued by EPA under Section 402 of the CWA. The permit became applicable through a Notice of Intent, submitted by Hecla on May 20, 2009, with an effective coverage date of December 25, 2009. EPA's MSGP applies in areas of the country where EPA has not delegated its NPDES permitting authority and where EPA has made the permit available for coverage, which area includes Idaho. The MSGP covers storm water discharges from both

industrial and construction activities for Sector G, metal mining facilities. The MSGP specifies steps that facility operators must take under the permit, including installing storm water control measures to minimize pollutants in storm water runoff.

FIRST CLAIM FOR RELIEF
(NPDES Permit Effluent Limit Violations)

23. The allegations of the foregoing paragraphs are incorporated herein by reference.

24. During the time period from May to December 2009, Hecla reported at least 113 days on which discharges from Outfall 003 exceeded NPDES permit effluent limits for lead or zinc, and one day, June 10, 2009, on which discharges from Outfall 002 exceeded NPDES permit effluent limits for zinc.

25. During the time period from October to November 2012, Hecla reported at least 33 days on which discharges from Outfall 003 exceeded NPDES permit effluent limits for lead or zinc.

26. On March 6, 2014, Hecla reported an additional exceedance of the NPDES permit effluent limits for zinc in discharges from Outfall 003.

27. Each day of each discharge referred to in Paragraphs 24 to 26 constitutes a separate violation of the applicable NPDES permit.

28. Pursuant to 33 U.S.C. §§ 1319(b) and (d), as modified by 40 C.F.R. Part 19, Defendant is liable for civil penalties of up to \$37,500 per day per each violation occurring after January 12, 2009.

SECOND CLAIM FOR RELIEF
(Unpermitted Discharges of Pollutants)

29. The allegations of the foregoing paragraphs are incorporated herein by reference.

30. Between approximately March 22, 2010 and November 2, 2010, Defendant discharged pollutants, including metals-contaminated wastewater, from Tailings Pond No. 3 to waters of the United States, without the authorization of an NPDES Permit.

31. On May 18, 2010, EPA conducted an inspection of the Lucky Friday Mine and Mill facility. EPA's inspection noted seepages and discharges observed along the south side bench of Tailings Pond No. 3. As a result of the inspection, EPA issued Hecla an information request, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, on June 18, 2010, requiring Hecla to sample the seepages and discharges and to explain the origins, if known.

32. Hecla responded to EPA's information request on July 16, 2010 with results from samples taken on June 22, 2010, indicating that seepages on the bench of Tailings Pond No. 3 and discharges of water from an old culvert along the tailings pond exceeded chronic and/or acute criteria of state water quality standards for cadmium, zinc and lead.

33. Prior to EPA's May 18, 2010 inspection, on or about March 22, 2010, Hecla began diverting the bench seepages and culvert water discharges from Tailings Pond No. 3 to Harris Creek, a tributary of the South Fork Coeur d'Alene River that flows most of the year. The South Fork in turn flows to the Coeur d'Alene River. Hecla continued diverting the bench seepages to Harris Creek until about June 30, 2010, when Hecla began pumping the seepage into Tailings Pond No. 3. The discharges of metals-contaminated water Hecla identified from the old culvert continued to discharge, if it flowed, to Harris Creek until Hecla eliminated the flow on or about November 2, 2010. Harris Creek is a "water of the United States" within the meaning of Section 502(7) of the CWA.

34. Each day of each unauthorized discharge of a pollutant referred to in Paragraphs 30 to 33 above constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

35. Pursuant to 33 U.S.C. §§ 1319(b) and (d), as modified by 40 C.F.R. Part 19, Defendant is liable for civil penalties of up to \$37,500 per day per each violation occurring after January 12, 2009.

THIRD CLAIM FOR RELIEF
(Storm Water Permit Violations)

36. The allegations of the foregoing paragraphs are incorporated herein by reference.

37. In connection with the metals-contaminated seepages and discharges identified at Tailings Pond No. 3, referenced in Paragraphs 30 to 33, Hecla violated the following conditions and limitations of the MSGP:

a. On or about February 24, 2010, failure to document in a storm water inspection report any previously unidentified discharges of pollutants from the site and any control measures needing replacement (Part 4.1.2);

b. In or around late February 2010, failure to orally report non-compliance event within 24-hours (App. B.12., Part F.1);

c. In or around late February 2010, failure to submit a written report of the non-compliance event within 5 days (App. B.12., Part F.1); and

d. On or about March 26, 2010, failure to document in a storm water inspection report any previously unidentified discharges of pollutants from the site and any control measures needing replacement (Part 4.1.2).

38. On November 26, 2012, EPA was informed that a fish hatchery located immediately below the borrow source for Hecla's Tailings Pond No. 4 construction site was affected by storm water discharges from the site. As a result, EPA conducted an inspection of the Tailings Pond No. 4 construction site on November 27, 2012. EPA's inspection identified that there were two rain events, one around October 15-16, 2012 and one around November 19-20, 2012, which resulted in storm water discharges from the construction site, in violation of the following terms and conditions of the MSGP:

a. On or about October 16, 2012, failure to "stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants" (Part 2.1.2.5) and to "divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, to minimize pollutants in your discharge" (Part 2.1.2.6);

b. On or about October 17, 2012, failure to orally report non-compliance within 24 hours (App. B. 12, Part F.1);

c. On or about October 21, 2012, failure to submit a written report on the non-compliance event within 5 days (App. B.12., Part F.1);

d. On or about November 21, 2012, failure to "stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants" (Part 2.1.2.5) and to "divert, infiltrate, reuse, contain, or otherwise reduce storm water runoff, to minimize pollutants in your discharge" (Part 2.1.2.6);

e. On or about November 22, 2012, failure to orally report non-compliance within 24 hours (App. B. 12, Part F.1); and

f. On or about November 26, 2012, failure to submit a written report on the non-compliance event within 5 days (App. B.12., Part F.1).

39. Each failure identified in Paragraphs 37.a to 37.d and 38.a to 38.f above is a violation of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1432.

40. Pursuant to 33 U.S.C. §§ 1319(b) and (d), as modified by 40 C.F.R. Part 19, Defendant is liable for civil penalties of up to \$37,500 per day per each violation occurring after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to 33 U.S.C. § 1319(d), assess civil penalties against Defendant;
2. Award the United States its costs of this action; and
3. Grant such other and further relief as this Court deems appropriate.

Date: May 28, 2015

Respectfully submitted,

FOR THE UNITED STATES:

Thomas A. Mariani, Jr.
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

/s/ Erika M. Zimmerman
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OF COUNSEL, ON BEHALF OF EPA:

STEPHANIE L. MAIRS
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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2015 I filed the foregoing Complaint with the CM/ECF system and served a copy via e-mail and first class mail on the counsel listed below:

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